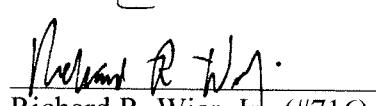


**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL	:	
Plaintiff,	:	
	:	
	:	
LYDIA ADAIR MCFADDEN	:	C.A. No. 05-00321 GMS
and	:	JURY TRIAL DEMANDED
CHRISTIANA CARE HEALTH	:	
SERVICES, INC.,	:	
Defendants.	:	

**APPENDIX TO PLAINTIFF'S ANSWER TO
DEFENDANTS' OPENING BRIEF IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT**


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Date: December 11, 2006

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Deposition Transcript of Dawn ShutakExhibit B

Exhibit A



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

4	KIMBRA CRISWELL	:	CIVIL ACTION
5	v.	:	
6	LYDIA ADAIR McFADDEN	:	ORIGINAL
	and CHRISTIANA CARE	:	
7	HEALTH SERVICES,	:	
	INC.	:	NO. 05-CV-00321

ORIGINAL

NOVEMBER 21, 2006

22 ESQUIRE DEPOSITION SERVICES
 Suite 1210
23 1600 John F. Kennedy Boulevar
 Philadelphia, Pennsylvania 191
24 (215) 988-9191

1 APPEARANCES :

2

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10 Representing the Defendants

11

12 ALSO PRESENT: Sandy Basara, RN

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1 - - -
2 I N D E X
3 - - -

4 Testimony of: DAWN C. SHUTAK

5 By Mr. Levin

5 , 49 , 54

6 By Ms. Massaro

46 , 53

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1 - - -
2 DEPOSITION SUPPORT INDEX
3 - - -
4

5 Direction to Witness Not to Answer

6 Page Line Page Line Page Line
7 None

8

9

10 Request for Production of Documents

11 Page Line Page Line Page Line
12 None

13

14

15 Stipulations

16 Page Line Page Line Page Line
17 None

18

19

20 Question Marked

21 Page Line Page Line Page Line
22 None

23

24

-DAWN C. SHUTAK

1

- - -

2

DAWN C. SHUTAK, after having
been duly sworn, was examined and
testified as follows:

5

- - -

6

DIRECT EXAMINATION

7

- - -

8

BY MR. LEVIN:

9

Q. Good morning. Is it Shutak?

10

A. Yes.

11

Q. Good morning Ms. Shutak. My
name is Nelson Levin. I represent Kimbra
Criswell in a lawsuit against Christiana
Hospital and Lydia Adair McFadden. I
will be taking your deposition today. I
don't think we will be very long, but I
would like to give you some instructions.
I know you met with counsel. Have you
ever had your deposition taken before?

19

A. Yes.

21

Q. And the same instructions
you have will also apply. I want you to
listen to my question, if you don't
understand my question, I want you to

-DAWN C. SHUTAK

1 tell me that. If you didn't hear my
2 question, I want you to tell me that.
3 Will you obey that instruction?

4 A. Yes.

5 Q. By the same token, the court
6 reporter is here, and I don't want us to
7 talk over each other. So let me finish
8 my question completely even if you can
9 anticipate what I'm going to say. Do you
10 understand that instruction?

11 A. Yes.

12 Q. Since the court reporter is
13 here and generating a transcript, I need
14 to have a verbal response. Shakes of the
15 head or nods cannot be taken down by the
16 court reporter. You have to answer
17 verbally. Can you do that?

18 A. Yes.

19 Q. If you need to take a break
20 at any time, let us know and we will
21 certainly accommodate you. Can you give
22 us your name and address for the record.

23 A. Dawn Shutak, 106 Spaniel
24 Court, Townsend, Delaware.

-DAWN C. SHUTAK

1 Q. You told me you have been
2 deposed before. How many times have you
3 been deposed before?

4 A. Once.

5 Q. Was it in connection with a
6 case arising from care at Christiana
7 Hospital?

8 A. Excuse me?

9 Q. Was it in connection with a
10 case arising from care at Christiana
11 Hospital?

12 A. Yes.

13 Q. Was the case filed in
14 Delaware?

15 A. To my knowledge.

16 Q. Briefly, could you tell me
17 what your role was in that case?

18 A. Supervisor on duty.

19 Q. Did you review any documents
20 before today in preparation for this
21 deposition?

22 A. Yes.

23 Q. What did you review?

24 A. I reviewed an Affidavit from

-DAWN C. SHUTAK

1 Maryellen Hoffman.

2 Q. What else did you review?

3 A. I reviewed employee health
4 record for the day Kimbra went down to
5 employee health.

6 Q. What else did you review?

7 A. That's it.

8 Q. Are you aware that the issue
9 in this case is whether Kimbra was an
10 independent contractor versus a special
11 employee of Christiana Hospital?

12 A. Yes.

13 Q. And an issue -- a sub issue
14 of that case is whether Christiana
15 Hospital controlled Kimbra's activity.
16 Are you aware that is an issue in this
17 case?

18 A. Yes.

19 Q. Are you aware that is the
20 reason or one of the reasons I have
21 requested your deposition today?

22 A. Yes.

23 Q. The employee health record
24 that you reviewed, that had to do with

-DAWN C. SHUTAK

1 Kimbra's treatment at the hospital after
2 her accident?

3 A. The day it happened.

4 Q. The day it happened.

5 A. Yes.

6 Q. There is no record that you
7 reviewed in connection with Kim before
8 this accident?

9 A. No.

10 Q. And Maryellen Hoffman, we
11 will talk about her in a minute, but she
12 was also a supervisor here at Christiana?

13 A. Yes.

14 Q. Ms. Shutak, can you briefly
15 give us your educational background.

16 A. I have an associates in
17 allied health science and I'm pursuing my
18 bachelors now.

19 Q. How long have you worked at
20 Christiana?

21 A. Since 1993.

22 Q. What were you hired as?

23 A. An x-ray tech.

24 Q. What is your present

-DAWN C. SHUTAK

1 position?

2 A. I am now a clinical
3 instructor with the School of Radiology
4 through Christiana Care.

5 Q. So your duties have changed
6 since you were hired?

7 A. Yes.

8 Q. And what are the duties of
9 an x-ray tech?

10 A. To perform radiographs on
11 patients, patient care, their paperwork
12 involved, working closely with the
13 radiologists and other staff to take care
14 of our patients.

15 Q. And now you are a clinical
16 instructor?

17 A. Yes.

18 Q. Who are your students?

19 A. They are through Delaware
20 Tech. There will be 60 come this time
21 next year.

22 Q. So you train the students
23 here at Christiana?

24 A. And other clinical sites.

-DAWN C. SHUTAK

1 Q. And what do you train them
2 to do?

3 A. Take radiographs, patient
4 care.

5 Q. When we were talking about
6 taking radiographs, that is the same as
7 x-rays?

8 A. Yes.

9 Q. Are we using portable x-ray
10 machines or stationary x-ray machines?

11 A. Both.

12 Q. In May 2002, the month that
13 this accident happened, what was your
14 position?

15 A. I was a senior technologist,
16 supervisor on dayshift.

17 Q. What were your duties in
18 that position?

19 A. I helped staff the
20 department, I did their schedules, I
21 oversaw the goings on in the department.

22 Q. And when you say department,
23 you mean the department of radiology?

24 A. Yes.

-DAWN C. SHUTAK

1 Q. What do you mean by help
2 staff the department?

3 A. I did their daily schedules,
4 Maryellen did their schedules for weeks
5 at a time. She put them on the days they
6 would work, and I would put them in the
7 slots they needed to be in to cover the
8 staffing.

9 Q. So who did their daily
10 schedules?

11 A. I did.

12 Q. And Maryellen did their
13 weekly schedules?

14 A. Yes.

15 Q. Tell me how the daily
16 scheduling worked.

17 A. We usually have between 13
18 to 17 techs on. We have different areas
19 we have to cover such as the operating
20 room, fluro, inpatient, emergency
21 department, portable. So I would put
22 people in those slots to cover those
23 areas where all of these x-rays are
24 taken.

-DAWN C. SHUTAK

1 Q. For example, if I was an
2 x-ray tech at Christiana, you would say
3 to me, Nelson, I want you to be in OR 2
4 at 3 p.m.?

5 A. You would be scheduled in
6 the OR and as the OR unfolds, but yes.

7 Q. Would I report to you each
8 day and you would tell me where to go?

9 A. I have a weekly schedule
10 done and they would know where they are
11 to be. There is a schedule hanging so
12 they would know on Tuesday, they are in
13 the operating room, on Tuesday they are
14 in portables. It comes from me but it is
15 done on a weekly basis.

16 Q. So then I would check in at
17 the beginning of each week to see where I
18 would be going?

19 A. Yes.

20 Q. And I would look at the
21 schedule that was posted on the wall?

22 A. Yes.

23 Q. If I was to look in on a
24 Monday, would I need to see you on

-DAWN C. SHUTAK

1 Tuesday to see where I was going or it
2 would just be my responsibility to know
3 that?

4 A. It is your responsibility.
5 If things were to change, I would notify
6 them before.

7 Q. You said help staff is one
8 of your duties, what do you mean by that?

9 A. At times Maryellen would do
10 the big schedule, and if I didn't have
11 enough staff, then I could call on other
12 people to fill those slots.

13 Q. Give me an example how that
14 would work.

15 A. An example, we had 13 techs
16 on, I knew there was going to be extra
17 cases in the operating room that day. I
18 could call a tech at home and see if they
19 would come in and work so I could cover
20 all of the areas.

21 Q. We covered scheduling, we
22 covered staffing, any other duties you
23 had May of 2002?

24 A. I also took x-rays, I did

-DAWN C. SHUTAK

1 all of this.

2 Q. You yourself was a
3 hands-on --

4 A. Uh-huh.

5 Q. -- operator of an x-ray
6 machine?

7 A. Correct.

8 Q. Besides help staffing,
9 scheduling and operating the x-ray
10 machine, did you have any other duties at
11 that time?

12 A. I handled problems coming
13 from different departments. Like if they
14 ordered a stat and we were not there, I
15 could send a tech up. Just general
16 problems through the day. What a
17 supervisor would do.

18 Q. Anything else?

19 A. No.

20 Q. On May 23, '02, were you
21 working at Christiana Hospital?

22 A. Yes.

23 Q. Was Kim working that day?

24 A. Yes.

-DAWN C. SHUTAK

1 Q. When did you first meet Kim
2 Criswell?

3 A. When she first started. The
4 exact date I don't know.

5 Q. Do you know how long she was
6 working at Christiana before this
7 incident?

8 A. Give or take a few months.
9 I'm not a hundred percent sure on that.

10 Q. What did she do here?

11 A. She was an x-ray tech and
12 she took x-rays on patients, provided
13 patient care.

14 Q. What are the duties of an
15 x-ray tech?

16 A. We take x-rays, we provide
17 patient care, we develop our films. When
18 we take x-rays it can take us anywhere
19 from an ICU unit doing a portable x-ray,
20 to the department or into the operating
21 room. It is a very wide area we cover.
22 The emergency department, inpatients.

23 Q. At this time and I mean this
24 time unless I change my question to be

-DAWN C. SHUTAK

1 specific, at this time I'm talking
2 May 2002, how many approximately x-ray
3 techs did Christiana have?

4 A. An average for the whole
5 entire department or dayshift?

6 Q. Well, for the whole entire
7 department.

8 A. Approximately 50 give or
9 take.

10 Q. And of those 50, how many
11 would be assigned to a dayshift?

12 A. Approximately 14.

13 Q. And what is the hours of the
14 dayshift?

15 A. They can range anywhere from
16 7:30 to 4, 8 to 4:30, 10 to 6 at that
17 time.

18 Q. Do you remember what Kim
19 Criswell looked like?

20 A. Yes.

21 Q. Can you describe her?

22 A. Freckles, red hair, it was
23 shoulder length at the time, not a big
24 girl, average.

-DAWN C. SHUTAK

1 Q. Was Kim Criswell an employee
2 of Christiana Hospital?

3 A. She was working for us
4 through Aurius.

5 Q. When you mean she was
6 working with you through Aurius, what is
7 your understanding of that?

8 A. Aurius is a company we
9 contracted to help cover our empty slots
10 within our department. So she worked as
11 a Christiana Care employee while she was
12 here. But we contracted her through her
13 company.

14 Q. And you contracted her --
15 were you involved in the contracting
16 between Aurius and Christiana?

17 A. Not with her, but I have
18 helped hire, I have done interviews with
19 other people we have contracted with
20 them.

21 Q. So explain to me how Aurius
22 supplies techs to Christiana.

23 A. It is my understanding that
24 where there is a need, there are these

-DAWN C. SHUTAK

1 companies who can provide x-ray
2 technologists or nursing or whatever. In
3 our case it is x-ray technologists. We
4 contact them, we have a shortage, we need
5 X amount of techs or one tech, and an
6 interview process usually takes place.
7 And then we tell them the ones we want,
8 and they come in and work for us and do
9 the same things our techs do, just we
10 have contracted them through the company.

11 Q. Did you interview Kim
12 Criswell?

13 A. No.

14 Q. Do you know who did?

15 A. No.

16 Q. So then if your department
17 is short an x-ray tech, you contact
18 Aurius, Aurius then supplies the x-ray
19 tech, is that correct?

20 A. Correct.

21 Q. And that is pursuant to a
22 contract between Aurius and Christiana?

23 A. Yes.

24 Q. Did Aurius hire Kim

-DAWN C. SHUTAK

1 Criswell?

2 A. Explain.

3 Q. Well, you contract with
4 Aurius to provide x-ray techs.

5 A. Yes.

6 Q. At that time when you make
7 that contract, is Aurius working for --
8 is Kim Criswell working for Aurius?

9 A. It is my understanding they
10 are.

11 Q. Have you ever heard of a Ray
12 Petty?

13 A. No -- yes, I have.

14 Q. Is it your understanding
15 that Ray Petty is an employee of Aurius?

16 A. Yes.

17 Q. And what is your
18 understanding of what Ray Petty does?

19 A. He is a recruiter, and it is
20 my understanding he is our contact when
21 we need an x-ray tech, we would go
22 through him to hire one.

23 Q. And then Ray would say I
24 have this x-ray tech Kim Criswell or

-DAWN C. SHUTAK

1 Susie Smith?

2 A. He would give us a few
3 usually.

4 Q. Have you spoken to him?

5 A. In a telephone meeting one
6 time.

7 Q. Are you familiar with the
8 contract between Aurius and Christiana as
9 it relates to Kim Criswell?

10 A. No.

11 Q. Do you know who issues Kim
12 Criswell's paychecks?

13 A. No.

14 Q. Do you know if Kim Criswell
15 was covered by workers' comp?

16 A. I'm not sure.

17 Q. Do you know who provided Kim
18 Criswell with workers' comp?

19 A. I'm not sure.

20 Q. Who issues your paychecks?

21 A. Christiana Care.

22 Q. Do they offer you workers'
23 comp?

24 A. Yes.

-DAWN C. SHUTAK

1 Q. Did Kim Criswell receive a
2 vehicle allowance?

3 A. I don't know the specifics
4 of her contract, but I know other people
5 have. So I could not answer for Kim.

6 Q. And when you mean specifics
7 of her contract, contract with who?

8 A. Christiana Care and Aurius,
9 and Kim.

10 Q. Did Kim Christiana receive a
11 per diem allowance?

12 A. I don't know.

13 Q. Did Kim Criswell receive a
14 401K?

15 A. I don't know.

16 Q. Do you receive a 401K?

17 A. Yes.

18 Q. Do you receive it through
19 Christiana Hospital?

20 A. Yes.

21 Q. Do you receive a vehicle
22 allowance?

23 A. No.

24 Q. Do you receive a per diem

-DAWN C. SHUTAK

1 allowance?

2 A. No.

3 Q. Does Aurius -- did Aurius
4 provide Kim Criswell with a vehicle
5 allowance?

6 A. I don't know.

7 Q. Did Aurius provide Kim
8 Criswell with a 401K?

9 A. I don't know.

10 Q. Did Christiana Hospital
11 issue Kim Criswell's paycheck?

12 A. I don't know.

13 Q. How often do you get paid by
14 Christiana Hospital?

15 A. Every two weeks.

16 Q. And is that how it was in
17 May 2002?

18 A. Yes.

19 Q. Were you receiving -- were
20 you covered by workers' compensation by
21 Christiana Hospital in May 2002?

22 A. Yes.

23 Q. In May 2002, Kim was an
24 x-ray tech here?

-DAWN C. SHUTAK

1 A. Yes.

2 Q. What kind of x-rays was she
3 taking?

4 A. She was performing any body
5 radiographs, chest x-rays, OR studies,
6 portable studies, fluoro studies.

7 Q. This may be hard to answer,
8 so I will ask you to estimate, on a
9 typical day, how many x-rays would she
10 take?

11 A. Depends on your rotation.
12 Portables, you could take anywhere from
13 40 to 50 a day. Inpatient, usually
14 between 15 and 25.

15 Q. A day?

16 A. Yes, a day. Operating room,
17 their cases tend to go longer, so you may
18 not do as many.

19 Q. Did you train her on the
20 x-ray machines?

21 A. I don't remember if I
22 specifically trained her. I know she had
23 an orientation of two weeks to our
24 hospital.

-DAWN C. SHUTAK

1 Q. Did you give that
2 orientation?

3 A. I ran the inpatient front
4 area, so the areas that she was rotating
5 in, the people there would orient her.

6 Q. What did this orientation
7 cover?

8 A. How our rooms were, because
9 every x-ray room from where she's been --
10 where she came from might have not been
11 quite the same. So we oriented her to
12 our x-ray rooms, how we developed our
13 films, the process in which we get films
14 read, how we handle stats versus routine
15 x-rays.

16 Q. And you say orientation --
17 strike that. Did that orientation cover
18 how to take an x-ray?

19 A. No, she should know how to
20 take an x-ray.

21 Q. Because Aurius is in
22 business, is it not, to supply qualified
23 techs --

24 A. Correct.

-DAWN C. SHUTAK

1 Q. -- to the hospital?

2 A. Correct. Her orientation
3 was basically to learn our layout of
4 things, how we ran things.

5 Q. And when you mean how we ran
6 things, in other words the physical
7 layout of the hospital --

8 A. It was all included, the
9 physical layout, how we call down
10 patients, where the patients -- what
11 patients took priority over other
12 patients, deciphering stats versus as
13 soon as possible. Operating room, the
14 layout of the operating room, the
15 equipment up there, the paperwork trail.

16 Q. Did Kim -- did you
17 personally review -- strike that. Did
18 Kim ever ask you to watch her take an
19 x-ray to make sure she was doing it
20 right?

21 A. No, not to my knowledge.

22 Q. Did Kim ever ask you or say
23 to you I don't know how to take an x-ray
24 of this and that body part?

-DAWN C. SHUTAK

1 A. Not to my knowledge.

2 Q. Did Kim ever say to you, I
3 don't know how to use such and such x-ray
4 machine?

5 A. I can't remember. This is
6 four years ago.

7 Q. And it was your
8 understanding that Kim was qualified to
9 use the x-ray machines that were here?

10 A. Yes.

11 Q. Did you personally review
12 any protocols with Kim?

13 A. I can't remember.

14 Q. Did you ever do an
15 evaluation of Kim?

16 A. Written evaluation?

17 Q. Yes.

18 A. No.

19 Q. Did you have authority to
20 fire Kim?

21 A. No. I could have input
22 towards it.

23 Q. Did Aurius have authority to
24 fire Kim?

-DAWN C. SHUTAK

1 A. I don't know.

2 Q. If Aurius fired her, could
3 she have another job in another Aurius
4 client?

5 A. I don't know.

6 Q. And incidentally, I use the
7 word client, is it your understanding
8 that Aurius -- that Christiana Care was a
9 client of Aurius?

10 A. Yeah.

11 Q. Did you ever personally go
12 with Kim and show her how to use an x-ray
13 machine?

14 A. I can't remember. I think I
15 did, but I can't remember.

16 Q. Before this accident, did
17 you believe that Kim was qualified to
18 operate the machinery on her own?

19 A. Yes.

20 Q. Before this accident, was it
21 your understanding that Kim was qualified
22 to operate the machinery on her own
23 without your supervision?

24 A. Yes.

-DAWN C. SHUTAK

1 Q. On the day of the accident
2 which is May 23, do you remember that
3 day?

4 A. Part of it.

5 Q. Did you see Kim before she
6 had her accident?

7 A. I can't remember.

8 Q. Did you speak with her
9 before she had her accident?

10 A. I can't remember.

11 Q. Did you tell her where to
12 report that day?

13 A. I can't remember if I told
14 her or if she was already scheduled in
15 the operating room and she just went
16 there.

17 Q. Is it fair to say that the
18 week of her accident your role vis-a-vis
19 Kim Criswell was to schedule her?

20 A. And if there were any
21 problems, I would handle them.

22 Q. So your role would be to
23 schedule her, correct?

24 A. Uh-huh -- yes.

-DAWN C. SHUTAK

1 Q. And if there were any
2 problems, what do you mean by that?

3 A. If anything were to happen
4 on our shift, they would report to me,
5 whether it be a film lost, something were
6 to happen to a tech or a patient, it
7 would come to me.

8 Q. Did anything like that
9 happen that week?

10 A. Not to my knowledge.
11 Before?

12 Q. Yes. Did anything like that
13 happen from the time that you were aware
14 of Kim working here until the time of her
15 accident?

16 A. I can't remember.

17 Q. So then it would be fair to
18 say that your interaction with Kim while
19 she was here was to post her schedule?

20 A. Yes.

21 Q. Let's talk about --

22 A. I had other interactions
23 with her besides the schedule. I just
24 can't remember specifics. I had quite a

-DAWN C. SHUTAK

1 few conversations with her.

2 Q. Of those conversations --
3 strike that. Do you recall any specifics
4 of those conversations?

5 A. I remember talking about a
6 car. I had recently purchased a car, a
7 Tahoe. And she was going to get a
8 Denali. I remember the conversation
9 because she was getting the top of the
10 line, the leather seats and I just
11 remember that sticking out. I remember
12 her I think we talked about her license
13 plate because it said x-ray, and just
14 little things about her boyfriend and
15 stuff. Just, you know, pleasant
16 conversation, an everyday conversation.

17 Q. Take you back to the day. I
18 think you told me you don't recall
19 whether you saw her or spoke to her
20 before this incident.

21 A. Right.

22 Q. Do you know where she was
23 supposed to report to that day?

24 A. I believe it was the

-DAWN C. SHUTAK

1 operating room.

2 Q. And that would have been
3 scheduled earlier in the week?

4 A. Correct. From time to time
5 if the operating room gets busy, if we
6 need to pull somebody to send them up to
7 cover, we can. I think she was scheduled
8 in the operating room that week, I don't
9 know if she was pulled up or not. I
10 can't remember that.

11 Q. Could Christiana fire her?

12 A. Yes. We have had people,
13 somebody from a traveling company come in
14 with alcohol on their breath and they
15 were dismissed.

16 Q. If Christiana wanted to fire
17 her, would they have to go through
18 Aurius?

19 A. I don't know.

20 Q. Did you have any interaction
21 with Aurius about Kim's performance
22 before this incident?

23 A. No, I didn't.

24 Q. Do you know if anyone did?

-DAWN C. SHUTAK

1 A. I don't know.

2 Q. If Kim was not performing
3 satisfactorily, did you have to contact
4 Aurius?

5 A. I would contact Maryellen
6 who would contact Aurius.

7 Q. And then what would Aurius
8 do?

9 MS. MASSARO: Object to form
10 of the question. You can answer
11 if you know.

12 THE WITNESS: I don't know.
13 BY MR. LEVIN:

14 Q. If you wanted -- put it this
15 way, if Kim was not performing her job,
16 what would you do?

17 A. I would probably talk to her
18 first. I would talk to Maryellen and we
19 would make a decision from there.

20 Q. Would you have to talk to
21 Aurius?

22 A. Maryellen would do that,
23 have that step.

24 Q. And Maryellen would be the

-DAWN C. SHUTAK

1 person who would talk to Aurius?

2 A. Correct.

3 Q. And what would be the
4 purpose of her talking to Aurius?

5 A. If we had a problem. But we
6 would try to address it within first.

7 Q. And then it would be Aurius'
8 job to pull her out of this environment?

9 A. I don't know how that
10 transpires, if we make the decision or
11 they make the decision, I don't know
12 that.

13 Q. Before Kim came here -- at
14 the time Kim came here, she was
15 contracted with Aurius, correct?

16 A. Correct.

17 Q. Do you know what other
18 hospitals Aurius had put her in?

19 A. No.

20 Q. That was my question.

21 A. No.

22 Q. You said there was a
23 traveling tech who was fired for showing
24 up intoxicated?

-DAWN C. SHUTAK

1 A. Smelling of alcohol.

2 Q. Am I correct in assuming if
3 anyone who worked in this hospital showed
4 up smelling of alcohol, they would be
5 terminated?

6 A. Correct. Or discipline
7 action would be taken. That comes above
8 me.

9 Q. But -- he -- by the way, at
10 this time, were there other techs from
11 Aurius working at Christiana?

12 A. I think so, but I can't
13 remember.

14 Q. Do you recall if there were
15 any problems with any of those techs?

16 A. No, not at that time.

17 Q. While you may not remember
18 their names, do you remember
19 approximately how many other techs from
20 Aurius were here at that time?

21 A. I don't remember.

22 Q. Is it 10, two?

23 A. Less than 10.

24 Q. You mentioned Maryellen and

-DAWN C. SHUTAK

1 I'm taking that to mean the woman --
2 Maryellen Hoffman. Was she your
3 supervisor?

4 A. She was a supervisor, a
5 section supervisor. So yes, she was
6 above me.

7 Q. And if there was a problem
8 with an Aurius tech, would she be the one
9 who would pick up the phone and call
10 Aurius?

11 A. Yes.

12 Q. And then what would Aurius
13 do to remedy the situation?

14 A. I don't know.

15 Q. Could Aurius remove the
16 tech?

17 A. I guess they could.

18 Q. You said I guess they could?

19 A. I don't know.

20 Q. But it is reasonable to you
21 that they could do that?

22 A. I don't know.

23 Q. If Aurius wanted to put Kim
24 Criswell to Thomas Jefferson University

-DAWN C. SHUTAK

1 Hospital, could they do that?

2 A. During our contract? Just
3 in general?

4 Q. In general.

5 A. Yes. If they contracted
6 Aurius.

7 MS. MASSARO: It is late,
8 but it is an objection to the form
9 of the question in terms of she
10 can answer if she knows.

11 BY MR. LEVIN:

12 Q. If Maryellen called Aurius,
13 do you know who she would speak to?

14 A. I believe it was Ray Petty.

15 Q. And what would be the
16 purpose for her speaking with Ray Petty?

17 A. If we needed to hire staff
18 to come cover our empty slots.

19 Q. Or if there was a problem
20 with an Aurius tech.

21 A. Yes.

22 Q. Is there an employment
23 contract between Christiana Hospital and
24 Kim Criswell?

-DAWN C. SHUTAK

1 A. I don't know.

2 Q. Are you aware of any
3 employment contracts between Aurius techs
4 and Christiana Hospital?

5 A. I don't know.

6 Q. The day of the accident, did
7 you go with Kim to the OR?

8 A. No.

9 Q. How did you find out the
10 accident happened?

11 A. Lydia called me from the OR
12 to tell me.

13 Q. What did Lydia tell you?

14 A. She told me that Kim had
15 injured her ankle or the back of her
16 ankle. She said that she had her foot
17 propped up on a stool. And we had
18 spoken, and I said we need to send her
19 down to employee health.

20 Q. Did Lydia say how Kim
21 injured her ankle?

22 A. She said they were coming
23 around a corner and a portable bumped
24 into her, portable x-ray machine.

-DAWN C. SHUTAK

1 Q. Did Lydia say how the
2 portable x-ray machine bumped into her?

3 A. Just that the front of it
4 just kind of bumped. I don't know the
5 specifics.

6 Q. Did Lydia say whether she
7 was holding the machine when it bumped
8 into her?

9 A. She said she was pushing the
10 machine.

11 Q. And when she told you she
12 said Kim's leg was propped up?

13 A. We have a little core area
14 upstairs, and she had sat her down when
15 it happened and then put her foot up and
16 then called me. I don't know the time
17 frames of all that.

18 Q. What did you do in response
19 to that call if anything?

20 A. That we needed to send her
21 to employee health to have her checked
22 out.

23 Q. If God forbid I walked out
24 of here and slipped and fell -- strike

-DAWN C. SHUTAK

1 that. You told her to send her to
2 employee health, did that happen?

3 A. Yes.

4 Q. As far as you know?

5 A. Uh-huh.

6 Q. Did you see Kim there after
7 the accident?

8 A. I can't remember if I saw --
9 I'm almost sure I saw her after she came
10 back from employee health. I can't
11 remember the exact timing I saw her.
12 Because she required an x-ray.

13 Q. What is employee health?

14 A. Employee health is where if
15 an employee gets injured or they are sick
16 or they are involved in some kind of
17 lifting a patient and hurt their back,
18 they could go down to employee health and
19 be looked at by somebody.

20 Q. Do you know what happened
21 after that?

22 A. I know she required an x-ray
23 and I know -- I don't know how long
24 after, it might have been a week or

-DAWN C. SHUTAK

1 longer, that she needed an MRI. Because
2 she stopped in. I can't remember for
3 sure, she had stopped in to say hello,
4 and that is all I remember. I think it
5 was an MRI, I'm not a hundred percent
6 sure.

7 Q. Do you know if anyone else
8 witnessed this accident besides Lydia and
9 Kim?

10 A. Not to my knowledge, I don't
11 know.

12 Q. In your experience, do you
13 consider Aurius a good source of
14 qualified x-ray techs?

15 A. Yes. You had good and bad.

16 Q. Like anything else.

17 A. Yeah, it was pot luck I
18 guess.

19 Q. Would you consider Kim one
20 of the good x-ray techs?

21 A. I consider Kim in the
22 middle. She wasn't bad, she wasn't
23 stellar.

24 Q. After the date of her

-DAWN C. SHUTAK

1 accident, did you ever see her again?

2 A. Yes.

3 Q. You said she came back.

4 A. Uh-huh.

5 Q. She came back here for an
6 MRI?

7 A. I remember her coming in to
8 say hello and I remember her boyfriend
9 standing back. I think she had said she
10 was having an MRI. But I can't be a
11 hundred percent sure.

12 Q. After that interaction, did
13 you ever see her again?

14 A. Not that I remember.

15 Q. Do you remember the name of
16 any other Aurius techs that were there at
17 that time, maybe not that day but around
18 May?

19 A. No.

20 Q. Besides x-ray techs, did
21 Aurius supply any other health care
22 personnel to Christiana?

23 A. I don't know.

24 Q. These portable x-ray

-DAWN C. SHUTAK

1 machines, they are pretty big?

2 A. Yes.

3 Q. If I was assigned to take an
4 x-ray in Room 303, would the x-ray
5 machine be on that floor? How would that
6 work?

7 A. Not necessarily. They are
8 strategically placed next to ICUs and in
9 the operating room. If you are in a room
10 that is not close to an ICU, you may have
11 to take the portable one to the elevator
12 down to the room.

13 Q. And that would be the x-ray
14 tech's job to do?

15 A. Yes.

16 Q. The type of machine involved
17 in Kim's incident, would this -- do you
18 need one or two people to move it?

19 A. One. They are motorized.

20 Q. When the x-ray tech takes
21 the x-ray, who is in charge of developing
22 the film?

23 A. The x-ray tech.

24 Q. And that would apply to Kim

-DAWN C. SHUTAK

1 as well?

2 A. Yeah.

3 Q. None of us are technicians
4 here, but there is a broken bone in room
5 303, x-ray tech takes the x-ray, correct?

6 A. Yes.

7 Q. And then what does the x-ray
8 tech do with the film?

9 A. They take it back to our
10 processing area, develop the film, and
11 then if it is of good quality, then
12 depending where it was, they could take
13 it back to -- if it was in the operating
14 room, usually the doctor likes to see the
15 films right then, and you would show them
16 the films.

17 Q. And the x-ray tech
18 determines if it is good quality?

19 A. Yes, and the doctor. When
20 you show it to him, he will tell you.

21 Q. But it is the x-ray tech's
22 job to develop the film?

23 A. Correct.

24 Q. The x-ray tech's interaction

-DAWN C. SHUTAK

1 with the machine is to move the machine,
2 correct?

3 A. Correct.

4 Q. Take the x-ray?

5 A. Correct.

6 Q. Develop the x-ray?

7 A. Correct.

8 Q. Speak to the patient?

9 A. Correct. The biggest part.

10 Q. And probably the most
11 difficult?

12 A. No.

13 Q. And the x-ray tech does this
14 on her own or his own?

15 A. Yes.

16 Q. Does the x-ray tech also
17 give you that lead bib thing?

18 A. At times, yes.

19 Q. Does Christiana still
20 contract with Aurius to provide techs?

21 A. I don't know. Because I'm
22 not in there anymore.

23 EXAMINATION

24 BY MS. MASSARO:

-DAWN C. SHUTAK

1 Q. In the beginning of the
2 deposition Mr. Levin asked you if you
3 understood or if you understood that you
4 were here due to issues of control or
5 whether Ms. Criswell was an independent
6 contractor. Do you understand the legal
7 ramifications of the term independent
8 contractor?

9 A. No.

10 Q. Did you have anything to do
11 with negotiating the terms of the
12 contract between Aurius and Christiana
13 Care?

14 A. No.

15 Q. Have you ever seen the
16 contract?

17 A. No.

18 Q. With regard to Ms. Criswell,
19 when she was here, did she have to comply
20 with Christiana Care rules, regulations
21 and policies?

22 A. Yes.

23 Q. Were you her only site
24 supervisor?

-DAWN C. SHUTAK

1 A. Yes.

2 Q. Did Ms. Criswell go to
3 employee health on May 23 of '02 --

4 A. Yes.

5 Q. -- after this incident?
6 Going with the line of questioning
7 earlier, if I walked out this door and
8 fell on the floor, God forbid, would you
9 send me to employee health or would you
10 send me to the emergency department?

11 A. I would send you to the
12 emergency department.

13 Q. Why is that --

14 A. Do you work for Christiana
15 Care?

16 Q. No.

17 A. Then I would send you to the
18 emergency department.

19 Q. Would you consider
20 Ms. Criswell and Lydia McFadden
21 co-employees?

22 A. Yes.

23 MR. LEVIN: I'm going to
24 object.

-DAWN C. SHUTAK

1 BY MS. MASSARO:

2 Q. The equipment that
3 Ms. Criswell used, Mr. Levin was
4 describing x-ray equipment, that
5 equipment, does that belong to Christiana
6 Care?

7 A. Yes.

8 Q. The films that she would use
9 when she would work here and look at
10 films and develop them, would those films
11 and that developing equipment, did that
12 belong to Christiana Care?

13 A. Yes.

14 Q. And also the lead bib that
15 she might use in the radiology department
16 to protect herself, would that belong to
17 Christiana Care?

18 A. Yes.

19 Q. So would all of the
20 equipment that she used here to perform
21 her job duties, would all of that
22 equipment belong to Christiana Care?

23 A. Yes.

24 Q. You mentioned that you

-DAWN C. SHUTAK

1 prepared her schedule and that if you
2 were short staffed, you would call in
3 someone?

4 A. Yes.

5 Q. Would that be from a pool of
6 employees, Christiana Care people, people
7 from Aurius, would that be the same pool
8 you would call in people from that pool?

9 A. Yes.

10 Q. Do you know who hired
11 Ms. Criswell?

12 A. I believe it was Maryellen
13 Hoffman.

14 Q. If you were unhappy with her
15 performance, would you have had the
16 authority to discharge her through
17 Maryellen Hoffman?

18 A. Yes.

19 MS. MASSARO: No further
20 questions.

21 FURTHER EXAMINATION

22 BY MR. LEVIN:

23 Q. Do you understand the legal
24 ramifications of the term co-employee?

-DAWN C. SHUTAK

1 A. No.

2 Q. You said in response to
3 counsel's questions, Maryellen Hoffman
4 hired Kim Criswell, but when she -- that
5 hiring process, that was an interview?

6 A. I wasn't there, so I don't
7 know.

8 Q. Well, when she hired her,
9 you are using the term hired, Kim
10 Criswell was in contract with Aurius,
11 isn't that right?

12 A. To my understanding, yes.

13 Q. She was under contract to
14 Aurius when Kim Criswell met her --

15 MS. MASSARO: Objection to
16 the form of the question.

17 BY MR. LEVIN:

18 Q. Kim Criswell was under
19 contract with Aurius when Maryellen
20 Hoffman met her, correct?

21 A. To my understanding, yes.

22 Q. And when she spoke to the
23 patient -- Kim would speak to a patient
24 before taking an x-ray, you would not

-DAWN C. SHUTAK

1 tell her what to say?

2 A. No.

3 Q. And when she put that
4 leather bib on, you would not tell her
5 how to do it?

6 A. No.

7 Q. And when she developed her
8 radiographs, you would not tell her how
9 to do that?

10 A. Not once she was oriented to
11 our system.

12 Q. Did your radiographs develop
13 differently than other hospitals?

14 A. They can. Some are
15 computer, all on a computer, others they
16 have to manually run them in a darkroom.
17 Ours was at the time a daylight system.

18 Q. Are there daylight systems
19 in other hospitals?

20 A. Yes.

21 Q. Are there computerized in
22 other hospitals?

23 A. Yes.

24 Q. So if she knew that from

Exhibit B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KIMBRA CRISWELL,)
Plaintiff,)
v.) Civil Action
LYDIA ADAIR MCFADDEN and) No. 05-CV-00321 GMS
CHRISTIANA CARE HEALTH)
SERVICES, INC.,) JURY TRIAL DEMANDED
Defendants.)

Deposition of KIMBRA CRISWELL, taken pursuant to notice at the law offices of White and Williams, LLP, 824 North Market Street, Suite 902, Wilmington, Delaware, beginning at 11:01 a.m., on Friday, July 14, 2006, before Julie H. Parrack, Registered Merit Reporter, Certified Realtime Reporter and Notary Public.

APPEARANCES:

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On behalf of Plaintiff

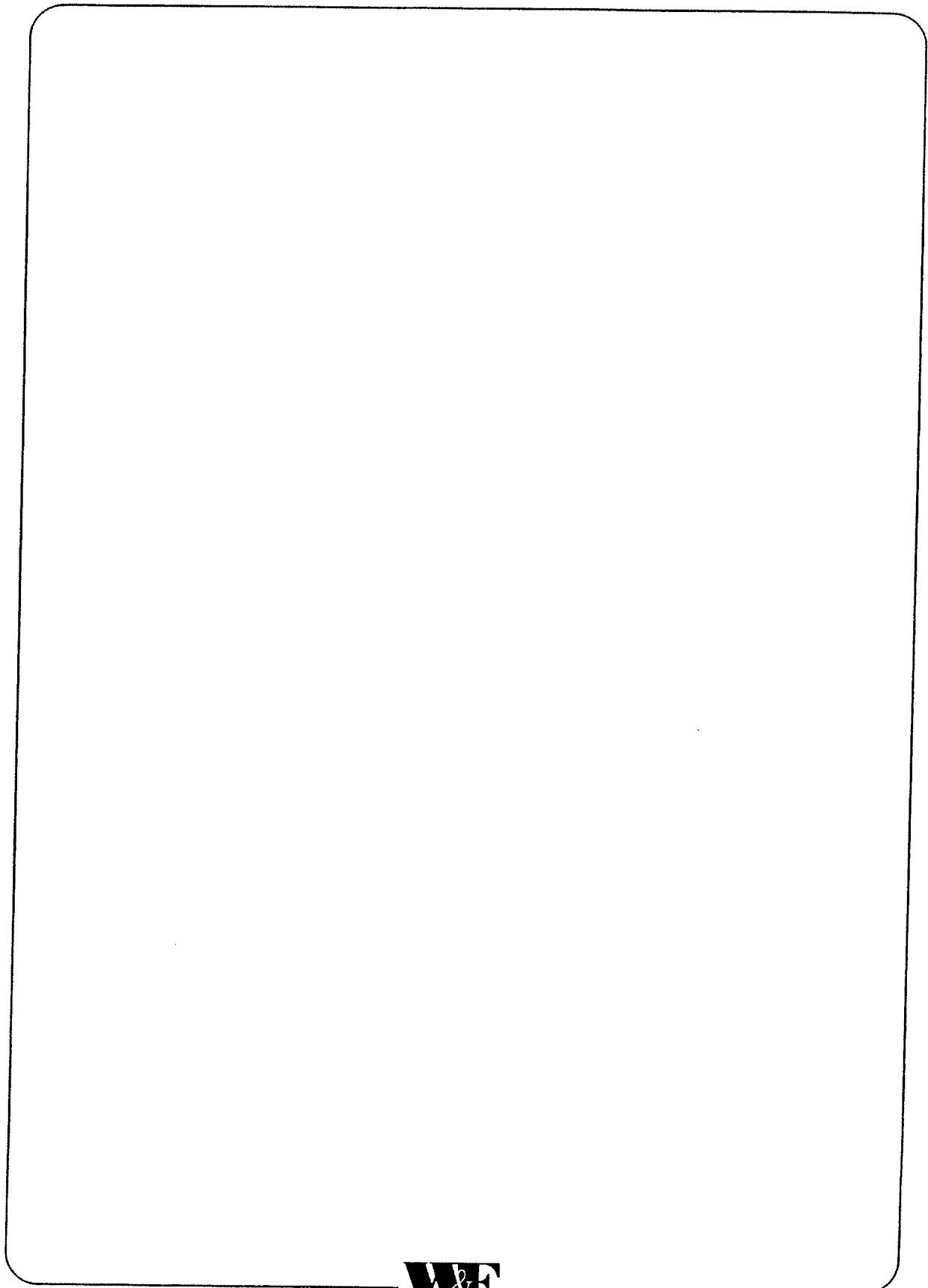
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Kimbra Criswell

2

5 BY MS. MASSARO:

6 Q. Hi, Kimbra.

7 A. Hi.

8 Q. My name is Debbie Massaro, and I represent
9 Christiana Care in this lawsuit which you filed. I
10 have a few just housekeeping things to go over before
11 we start the deposition. Have you ever given a
12 deposition before?

13 A. No.

14 Q. Okay. Before we start, you were just sworn in,
15 so do you understand that that means that's the same
16 as if you're in a court of law?

17 A. Yes.

18 Q. Okay, so for that reason, if you don't
19 understand a question that I ask you, let me know. I
20 can rephrase it, I can repeat it. If you have any
21 problems, just let me know with that. Okay?

A. (Nodded affirmatively.)

Q. Also, you'll notice she's typing everything
that we say, and it's important -- because we tend to

Kimbra Criswell

3

1 nod -- it's important to say yes or no, rather than
2 nod.

3 A. Okay.

4 Q. And also, and I'm the most guilty of this, we
5 tend sometimes to talk over each other. You know, let
6 me finish my question first, because sometimes you may
7 be thinking that I'm going in one direction, and I may
8 be going in the totally opposite direction. So let me
9 finish my question completely before you answer. And
10 again, I'll try not to do it, but if I do, just give
11 me a holler if I talk over you. But let's just be
12 careful with that, not to talk over one another, okay?

13 A. Okay.

14 Q. And as I told you earlier, if you need a break,
15 just let me know. Also, we're talking about a pretty
16 long history here. If there's something you don't
17 remember, just feel free to say so, because we'll be
18 going back over your medical history.

19 A. Okay.

20 Q. To start, could you please state and spell your
21 name for the record?

22 A. Kimbra, K-i-m-b-r-a, Criswell, C-r-i-s-w-e-l-l.

23 MR. LEVIN: Kim, I'm going to give you one
24 additional instruction. You're kind of soft spoken.



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Kimbra Criswell

4

1 There is an air conditioner on today. Could you just
2 speak up and pretend you're speaking towards the
3 window or the back of the courtroom, okay?

4 THE WITNESS: Okay.

5 MR. LEVIN: Great.

6 Q. Thanks. Are you on any medications today that
7 would affect your memory or judgment?

8 A. No.

9 Q. Okay. Are you on any medications today?

10 A. Yes.

11 Q. What are they?

12 A. Nortriptyline, Bextra, and I also take the
13 birth control pill.

14 Q. What is the Nortriptyline for?

15 A. It's for neurologic pain in my leg.

16 Q. And the Bextra?

17 A. Excuse me, I'm on Celebrex now. They switched
18 it.

19 Q. Okay, and what is that for?

20 A. Inflammation.

21 Q. Where?

22 A. In my leg.

23 Q. Did you review any documents today in
24 preparation for your deposition?

Kimbra Criswell

5

1 A. No.

2 Q. And where do you live currently?

3 A. Phoenix, Arizona.

4 Q. And the address?

5 A. 1814 East Bell, B-e-l-l, Road, No. 2120,
6 Phoenix, Arizona, 85022.

7 Q. And how long have you lived there?

8 A. Nineteen months.

9 Q. And prior to that where did you live?

10 A. Pennsylvania.

11 Q. Okay, what brought you to Arizona?

12 A. Better weather and hopes of obtaining a job
13 there.

14 Q. And you say you lived in Pennsylvania prior to
15 that?

16 A. Yes.

17 Q. Immediately prior to Bell Road you lived in
18 Pennsylvania?

19 A. No.

20 Q. Where did you live immediately prior to Bell
21 Road?

22 A. In Phoenix with my friends.

23 Q. And what is that address?

24 A. 2109 East Wahalla, W-a-h-a-l-l-a, Road.



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Kimbra Criswell

6

1 Q. And how long did you live there?

2 A. Eleven months.

3 Q. And then when did you live in Pennsylvania?

4 Was it prior to that?

5 A. Yes.

6 Q. So you didn't go from Florida to Arizona, you
7 went from Pennsylvania to Arizona; is that correct?

8 A. Correct.

9 Q. When were you living in Pennsylvania?

10 A. April of '04 till December of '04.

11 Q. So just two months -- I mean just actually
12 eight months?

13 A. Yes.

14 Q. And where did you live in Pennsylvania?

15 A. 818 West 5th Street, Lewistown.

16 Q. Were you working there?

17 A. No.

18 Q. And then where were you living prior to that?

19 A. Fort Myers, Florida.

20 Q. And the address there, if you know it? If you
21 don't, that's fine.

22 A. Corbel Circle.

23 Q. Okay, and how long were you there?

24 A. Sixteen months.

Kimbra Criswell

7

1 Q. What brought you from Florida to Pennsylvania?

2 A. I had gotten out of a relationship and moved
3 home with my family.

4 Q. Is your family here in Pennsylvania?

5 A. Yes.

6 Q. Are they currently still here in Lewistown; is
7 that correct?

8 A. Yes.

9 Q. And then prior to that where did you live?

10 A. Newark, Delaware.

11 Q. And you don't need to give me the addresses,
12 but for approximately how long were you in Newark?

13 A. Seven months, April till November, seven or
14 eight months.

15 MR. LEVIN: Of what year?

16 THE WITNESS: '02.

17 Q. And during that seven-month period, did you
18 work that whole time for Aureus?

19 A. No.

20 Q. Okay, who else did you work for?

21 A. I worked the first six weeks for Aureus, and
22 then I was there for my medical care after the injury.

23 Q. We'll talk a little more about that later.

24 Okay, prior to Delaware, where did you live?



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Kimbra Criswell

8

1 A. Fort Myers, Florida.

2 Q. And when did you live in Fort Myers, if you
3 remember?

4 MR. LEVIN: She said prior to Delaware.

5 Before Delaware, did you live in Fort Myers?

6 THE WITNESS: Yes.

7 A. From January till April of '02.

8 Q. And what brought you from Florida to Delaware?

9 A. My job.

10 Q. Was that Aureus?

11 A. Yes, ma'am.

12 Q. Then prior to Florida, where did you live?

13 A. Cambridge, Massachusetts.

14 Q. For how long?

15 A. Fifteen weeks. I was there 15 weeks.

16 Q. And what did you do there?

17 A. I worked for Aureus.

18 Q. And prior to that where did you live?

19 A. Las Vegas, Nevada.

20 Q. And what did you do there?

21 A. Worked for Aureus.

22 Q. And for how long were you there?

23 A. Sixteen weeks.

24 Q. And prior to that?

Kimbra Criswell

9

1 A. Phoenix, Arizona.

2 Q. How long?

3 A. Five months.

4 Q. Is that Scottsdale, Arizona? Was it near
5 Scottsdale?

6 A. Yeah, my address was Scottsdale, yeah.

7 Q. And what were you doing there?

8 A. Worked for Aureus.

9 Q. And prior to that?

10 A. Charlottesville, Virginia.

11 Q. What was the year?

12 A. September through December 2001.

13 Q. And what brought you from Charlottesville to
14 Arizona?

15 A. My job with Aureus.

16 Q. Same company. How long had you been working
17 with Aureus at the date of this incident?

18 A. I started September 17th, 2001; about 19
19 months.

20 Q. And could you explain to me what you did with
21 Aureus, what exactly your job title was and job
22 responsibilities were?

23 A. I was a full-time traveling x-ray tech and
24 filled in at hospitals that were short-staffed.



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Kimbra Criswell

10

1 Q. And what education did you have for that?

2 A. I have my associate's degree in radiography.

3 Q. And where did you get that?

4 A. Pennsylvania College of Technology,
5 Williamsport, Pennsylvania.

6 Q. When did you graduate?

7 A. August 13th, 1999.

8 Q. Is that the highest degree that you have?

9 A. Yes.

10 Q. And how old are you today?

11 A. Twenty-seven.

12 Q. How young are you, is what I should say. Okay.

13 You said that you live in Arizona. Who
14 lives with you, your immediate family?

15 A. I live by myself now.

16 Q. Okay. So you live in Arizona by yourself. And
17 you said you had moved to, I believe it was Florida in
18 a relationship. Have you ever been married?

19 A. No.

20 Q. Back to your employment, at the time of the
21 incident, you said you had been working with Aureus
22 for six weeks. Is that correct?

23 A. Six weeks at that hospital at the time of the
24 accident.

Kimbra Criswell

11

1 Q. That's what I meant. And what type of duties
2 did you perform at Christiana Hospital then?

3 A. I took x-rays.

4 Q. And who did you report to at Christiana
5 Hospital? Did you work, first of all, only at
6 Christiana Hospital, or did you also work at
7 Wilmington Hospital?

8 A. Just Christiana.

9 Q. Who did you report to at Christiana Hospital?

10 A. Dawn.

11 Q. Do you remember Don's last name?

12 A. "Spitnik" or something. It was something odd.

13 Q. And do you remember what his title was?

14 A. It's a her. She's a supervisor.

15 Q. Okay, Dawn, D-a-w-n?

16 A. Yes.

17 Q. Okay. And do you remember her title?

18 A. She was lead tech.

19 Q. Did you have any other supervisor there at
20 Christiana Hospital?

21 A. No.

22 Q. And what were your hours?

23 A. 7 to 3:30 or 7:30 to 4.

24 Q. And was this full time?



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Kimbra Criswell

12

1 A. Yes.

2 Q. So was this Monday through Friday typically or
3 did the days vary?

4 A. Typically it was Monday through Friday, but I
5 was required to cover weekends at times.

6 Q. When you were there, did Christiana Care or
7 Christiana Hospital provide you the supplies that you
8 needed to do your job?

9 A. Supplies, as in?

10 Q. What you needed to take x-rays?

11 A. The x-ray machine, yes.

12 Q. And if you had to do any patient care when you
13 were there, did they supply you with bandages, that
14 type of thing, if you needed them?

15 A. Yes.

16 Q. When you were there were you ever disciplined?

17 A. No.

18 Q. And were you ever evaluated?

19 A. No.

20 Q. Let's talk a little bit about the incident that
21 occurred on May 23rd of 2002. First, before we get
22 into that, do you know Lydia McFadden?

23 A. Know of her.

24 Q. She's the defendant in this case?

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1 A. Yes.

2 Q. One of the defendants. And I represent her as
3 well as the hospital. Did you speak with her on the
4 day of the incident?

5 A. Yes.

6 Q. Have you spoken with her since the day of the
7 incident?

8 A. No.

9 Q. Have you ever seen her since the day of the
10 incident?

11 A. No.

12 Q. Had you worked with her every day?

13 A. No.

14 Q. How often had you worked with her?

15 A. Two to three days a week.

16 Q. And had you known her pretty much since you'd
17 been there, the six weeks that you had been there?

18 A. Just as a fellow employee.

19 Q. And --

20 MR. LEVIN: Well, that's incorrect.

21 THE WITNESS: Fellow worker.

22 MR. LEVIN: You were not an employee of
23 Christiana Hospital, correct?

24 THE WITNESS: Right, correct.



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1 MR. LEVIN: You were always employed at
2 Aureus, correct?

3 THE WITNESS: Correct.

4 MS. MASSARO: Okay, let her testify, okay?
5 It's her testimony.

6 BY MS. MASSARO:

7 Q. What was your relationship with her in terms of
8 was she a supervisor or anything like that?

9 A. No.

10 Q. Could you describe the incident that occurred
11 that day?

12 A. We were, Lydia and I were walking down the hall
13 side by side having a conversation. And we approached
14 the portable x-ray machine which was parked in the
15 hallway. She went to the control part of the machine.
16 I went to the front of the machine and unplugged it
17 from the wall. We continued our conversation
18 face-to-face. Once the conversation was finished, I
19 turned 180 degrees with my back towards her, took one
20 step with my right foot, and she ran the machine over
21 the back of my left leg.

22 Q. And then what did you do? What did your body,
23 physically what did your body do?

24 A. Pain immediately. I was down to my knees.

1 Q. And then what did you do?

2 A. I sat there for a while.

3 Q. Was Lydia there with you?

4 A. Yes, then she went to do the x-ray that we were
5 going to go do together.

6 Q. Is that where you were on the way to, to
7 perform an x-ray together?

8 A. Yes.

9 Q. Was this a patient there in the hospital?

10 A. In the operating room.

11 Q. Was it a stat order?

12 A. Everything in the OR is stat.

13 Q. And did you then report to Employee Health at
14 Christiana Hospital?

15 A. Not immediately.

16 Q. When did you report to Employee Health?

17 A. Right after lunch, about --

18 Q. Okay, can you show me --

19 A. It was about an hour after that.

20 Q. About an hour after the incident.

21 A. Um-hum.

22 Q. Okay. And what did you feel?

23 A. Immediate pain.

24 Q. Where?



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1 A. The back of my leg, back of my heel.

2 Q. Could you first, if you can on these pictures,
3 these are pictures that your attorney has provided for
4 us. Can you show me what part of the machine struck
5 your --

6 A. That's not an accurate picture.

7 Q. Okay.

8 MR. LEVIN: This is a picture of a
9 different machine, off the record. It's that.

10 MS. MASSARO: Okay. That's why I brought
11 both, because I wasn't really sure.

12 Q. Is this the picture that you're looking at,
13 which I will have marked as an exhibit, does this
14 reflect the machine that was involved in the incident?

15 A. Yes.

16 Q. Can you maybe use my pen and draw an arrow as
17 to which part of the machine you believe struck the
18 back of your heel?

19 A. It's on the other side of this wheel, the
20 bracket on the other side of the wheel. This same
21 bracket on the other side.

22 MR. LEVIN: Could you then draw and say
23 "bracket."

24 MS. MASSARO: "On other side."

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(Criswell Exhibit No. 1 was marked for identification.)

3 Q. Now, just for my understanding, because I have
4 a pea brain and I don't really understand, was this
5 wheel -- so you're saying that this wheel, there's a
6 bracket on the other side and this wheel was like
7 turned out?

A. The wheel pivots 360 degrees.

9 Q. So the wheel was this part, would you say then
10 that that was like inside and then this was on the
11 outside and that struck you? I guess I'm trying to
12 figure out how the underside of that struck you.

A. I don't understand the question.

14 MR. LEVIN: Kim, what she's trying to ask
15 is you said there is a wheel here. correct?

16 THE WITNESS: Yes.

17 MR. LEVIN: There is a bracket that we see
18 in this picture, right?

19 THE WITNESS: Yes

20 MR. LEVIN: On the other side of the wheel
21 there is a bracket correct?

22 THE WITNESS: Yes

23 MR. LEVIN: The wheel then was turned, not
24 in the same way it's depicted here, correct?

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1 THE WITNESS: Correct.

2 MR. LEVIN: And when that wheel is turned,
3 it would be parallel to the front of the machine,
4 correct?

5 THE WITNESS: When you push the machine
6 forward, the wheel is perpendicular to the front of
7 the machine.

8 MR. LEVIN: There you go.

9 BY MS. MASSARO:

10 Q. Okay. So although this is not the right
11 machine, was the wheel in this fashion? For example,
12 was the wheel aligned like this as it was going down
13 the hall?

14 A. These are two different machines.

15 Q. Right, I understand that. But I'm trying to
16 get the principle down here in terms of the machine.
17 The wheels are still the same, aren't they, even
18 though the machines obviously are different, they're
19 made like --

20 A. They're similar but they're not identical, no.

21 Q. So in terms of the how they go down the hall,
22 you were standing in front here?

23 A. No.

24 Q. Okay, were you standing --

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1 A. I was standing in front here.

2 Q. In front here, okay. So the person was behind
3 pushing it here and the wheel was there.

4 A. Lydia was here, I was here.

5 Q. Got it, okay. Now my pea brain is a little
6 clearer.

7 MR. LEVIN: You want to mark that?

8 MS. MASSARO: Sure. I'm going to write
9 "front" and "back" on this and I'll show it to you. I
10 probably shouldn't be writing on this, but just so you
11 know that that's what I'm doing, Nelson. We'll mark
12 that as Exhibit 2.

13 (Criswell Exhibit No. 2 was marked for
14 identification.)

15 Q. Okay, now what did Lydia say immediately after
16 the incident to you?

17 A. There weren't words. It was more of a "huh,"
18 gasp.

19 Q. Okay, and you didn't discuss it with her at
20 all?

21 A. All she said was she would go do the x-ray
22 herself and I should go sit down.

23 Q. And then you sat down for an hour and then you
24 went to Employee Health; is that correct?



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1 A. I got some ice from the PACU first, and I sat
2 with it elevated.

3 Q. And then, well, before we get to the Employee
4 Health, you have also provided some photographs,
5 actually not photographs, but copies of photographs.
6 And as I understand it --

7 MS. MASSARO: I really do need color
8 photographs, and I will just put in a request for
9 that.

10 MR. LEVIN: No problem.

11 MS. MASSARO: Thank you.

12 Q. Could you show me on these photographs, I would
13 also like to see your foot, but if you could show me
14 on these photographs where the machine hit your heel.
15 Okay, I'll give you my pen, if you could just mark
16 that for me.

17 A. (The witness complied with counsel's request.)

18 MR. LEVIN: And maybe make an arrow on the
19 border saying --

20 MS. MASSARO: To the more specific area.

21 MR. LEVIN: -- saying "where machine hit
22 heel."

23 Q. And that's a pretty wide range. Can you be any
24 more specific?

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1 A. Well it hit and it -- when it hit it knocked me
2 to my knee and then it ran, you know, because she was
3 still in the forward motion. So it hit and --

4 Q. Okay, so the range would be from there to there
5 is what you're saying. The first impact was here and
6 then the range was up that high?

7 A. Yes.

8 MS. MASSARO: If I could have this marked
9 as an exhibit.

10 Q. And I'd like to see on your heel.

11 (Criswell Exhibit No. 3 was marked for
12 identification.)

13 A. Okay. (Indicating). This is where she hit
14 originally.

15 Q. All right.

16 MR. LEVIN: Indicating, for the record,
17 the witness is demonstrating on her left heel in the
18 Achilles tendon region the impact point of the metal
19 bracket of the machine.

20 Is that correct, Kim?

21 THE WITNESS: Yes.

22 Q. Which is reflected as well in the photographs
23 which we've marked.

24 And is there a scar on your ankle or no?



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1 Okay, all right. Thanks.

2 You have little feet. What size feet do
3 you have?

4 A. Six, six and a half.

5 Q. Tiny. Now, when you went to Employee Health an
6 hour later, who did you see?

7 A. It was a P.A. that works there. I don't recall
8 her name.

9 Q. And what did she do?

10 A. Examined my leg and ordered x-rays and put me
11 on crutches.

12 Q. And what type of shoes were you wearing at the
13 time of the incident?

14 A. Medical clogs.

15 Q. Did they have a back?

16 A. No.

17 Q. Did they have a heel?

18 A. I don't understand.

19 Q. Did the medical clogs have a heel?

20 A. You mean like for height?

21 Q. Yes.

22 A. No.

23 Q. So they were flat medical clogs?

24 A. Yes.

1 Q. And did she send you for an x-ray?

2 A. Yes.

3 Q. And do you remember what the results of the
4 x-ray were?

5 A. Negative.

6 Q. And then what happened after that?

7 A. She told me to come back in two business days
8 and she would re-evaluate me, to stay non-weight
9 bearing.

10 Q. Did you return to work then at all the next two
11 days?

12 A. No.

13 Q. And then did you report back to Employee Health
14 in a couple of days?

15 A. Yes.

16 Q. And what happened at that time?

17 A. A lady by the name of Candace reexamined me and
18 decided there wasn't anything else they could do for
19 me and referred me to Dr. DiPretoro, who is a
20 podiatrist.

21 Q. Okay. And before we get to Dr. DiPretoro,
22 prior to this incident had you been to Employee Health
23 at all?

24 A. No.



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1 Q. And did you ever have any other problems with
2 an x-ray machine prior to this incident?

3 A. I had hurt my back the week before.

4 Q. Do you remember reporting to Employee Health
5 for that?

6 A. I did, because they gave me pain pills for my
7 back.

8 Q. Do you remember what they gave you?

9 A. A pain pill and a muscle relaxer. I don't
10 recall names.

11 Q. And what happened in that incident?

12 A. I was wheeling a fluoro screen into the room,
13 and the nurse had taped down the doctor's headlight
14 cord to the floor with cushy medical tape versus the
15 plastic. And when I went to push it over, the machine
16 didn't go.

17 Q. And then what happened?

18 A. I had pain in my back.

19 Q. In your upper back or your lower back?

20 A. Mid.

21 Q. And what was the treatment? I know you said
22 the medicine.

23 A. They gave me muscle relaxers and pain pills.

24 Q. Anything else?

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1 A. No.

2 Q. Was an x-ray done?

3 A. It was fluoro, it's continuous x-ray. At that
4 point somebody helped me get the machine in.

5 Q. I'm sorry. Was an x-ray done of your back that
6 day --

7 A. No.

8 Q. -- when you went to Employee Health? Now,
9 Dr. DiPretoro, what was his treatment when you went to
10 see him?

11 A. He ordered an MRI.

12 Q. And did he tell you what that showed?

13 A. Yes.

14 Q. And what was that?

15 A. A tear of the Achilles tendon.

16 Q. And what was his treatment?

17 A. I was casted three separate times.

18 Q. And then what?

19 A. Physical therapy.

20 Q. Did you attend physical therapy?

21 A. Oh, yeah.

22 Q. And where did you go for physical therapy?

23 A. Pro Physical Therapy.

24 Q. And how long did you undergo physical therapy?



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1 A. With Pro, three hours a day, three days a week
2 for, I was there for four or five months with them.

3 Q. So that was even after you had gone to the
4 hospital in August, or was that all before you went to
5 the hospital in August?

6 A. I had been there twice before I was admitted.

7 Q. Now, what brought you to the hospital August
8 5th?

9 A. My leg was cold and purple.

10 Q. So when you reported to the E.D. on August 5th
11 of '02, was your foot cold and purple at that time or
12 had it been previous to?

13 A. It had been previous. It was worse, and it was
14 not getting better so I went to the E.R.

15 Q. And who did you see in the E.D., do you
16 remember?

17 A. No.

18 Q. Was it a doctor?

19 A. Yes.

20 Q. And did the doctor admit you to the hospital?

21 A. Yes.

22 Q. And who was your doctor while you were in the
23 hospital?

24 A. Dr. Rao.

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1 Q. And what did he do?

2 A. Ran more tests.

3 Q. What type of tests did you have, do you
4 remember?

5 A. Vascular tests, an ultrasound, and they tested
6 my veins and arteries from my waist down, and an MRI.

7 Q. And what did the doctor ultimately tell you was
8 causing the cold and purple?

9 A. They ruled out a blood clot. They didn't know
10 what was causing the cold and purple since there
11 wasn't a clot.

12 Q. So did they give you a diagnosis before you
13 left the hospital?

14 A. Yes, but not that doctor.

15 Q. Who gave you the diagnosis?

16 A. Dr. Leschek-Gelman.

17 Q. And what was the diagnosis?

18 A. RSD.

19 Q. And what did she use to determine that, do you
20 know?

21 A. Based on the symptoms.

22 Q. And you reported to the E.D. with -- what was
23 cold and purple, the whole foot or the toes?

24 A. My left leg from just below the knee, clear to



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1 the toes.

2 Q. And how long did that last?

3 A. I still have it today.

4 Q. Well, I'm talking about in August 5th of '02
5 when you went to the emergency department, was it nine
6 hours?

7 A. It had been cold and purple five hours before I
8 went to the E.R.

9 Q. And then how long after you went to the E.R.
10 did it last after that?

11 A. Twenty-four hours.

12 Q. And then when you were in the hospital for that
13 time frame, did it ever turn cold and purple again
14 while you were in the hospital?

15 A. Yes.

16 Q. How often?

17 A. Two to three times a day.

18 Q. Every day?

19 A. Yeah.

20 Q. And you just said that it's still cold and
21 purple today. Now I just looked at it and it wasn't
22 purple, so how often does it occur? Is it a
23 continuous thing or an intermittent thing?

24 A. It's an intermittent thing.

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1 Q. Okay, and how often does it occur today?

2 A. Two to three times a week.

3 Q. And who are you seeing for that now?

4 A. Dr. Duwanjee.

5 Q. And what is the treatment now?

6 A. All I can do is take my meds for the pain and
7 physical therapy.

8 Q. And how often do you go to physical therapy?

9 A. Twice a week.

10 Q. And that's in Arizona?

11 A. Yes.

12 Q. And where is that? What is the name of the
13 physical therapy place?

14 A. Endurance Rehabilitation.

15 Q. What city?

16 A. Scottsdale.

17 Q. And Dr. Duwanjee is the one who has prescribed
18 that physical therapy for you?

19 A. Yes.

20 Q. And the cold and purple, is it the same -- you
21 say it happens now two to three times weekly, and
22 before initially it was two to three times daily. Is
23 that correct?

24 A. Yes.



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1 Q. Is it the same today as it was initially?

2 MR. LEVIN: Could you rephrase --

3 Q. Sure. In terms of, you said to me earlier that
4 it was cold and purple from about the knee down
5 initially. And you went to the hospital for that
6 because it was cold and purple. What I'm asking is --
7 and you said that happened two to three times a day
8 when you were in the hospital, and then you said it
9 happens now two to three times a week. What I want to
10 know is, the cold and purple, is it the same thing
11 from the knee down, is it cold and purple the same as
12 it was initially?

13 A. Yes.

14 Q. And do you see any other physicians other than
15 Dr. Duwanjee for that?

16 A. Not at this time.

17 Q. Have you had any other hospitalizations
18 regarding this incident, other than the one in August
19 of '02?

20 A. No.

21 Q. Have you had any surgery regarding this
22 incident?

23 A. No.

24 Q. Now, there came a time when you had a fracture

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1 in November of '02. And the complaint indicates that
2 sometime in November you stepped off a curb, a normal
3 size curb. Where did that occur?

4 A. Parking lot of Applebee's.

5 Q. And what were you doing?

6 A. Going to get in the car.

7 Q. And when was this? What time of day?

8 A. 9:00 at night.

9 Q. And had you had any pain in your toes in that
10 area prior to this incident?

11 A. It hurt all the time.

12 Q. And had you had any x-rays for a potential
13 break prior to this incident?

14 A. Yes.

15 Q. And who ordered those x-rays?

16 A. Dr. DiPretoro.

17 Q. And what were the results --

18 A. Negative.

19 Q. -- if you remember. Okay. And after this
20 incident, what did you do?

21 A. Called --

22 Q. Well, actually, what happened? Could you
23 describe what happened first?

24 A. Came out of the restaurant and went to get in



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1 the car and stepped left foot first off the curb, and
2 felt a crack immediately and pain.

3 Q. So this was additional pain to what you were
4 already experiencing?

5 A. The RSD makes it that way.

6 Q. Like, for example, like right now, are you in
7 pain?

8 A. Yes.

9 Q. Is it a constant pain?

10 A. Yes.

11 Q. And has a doctor told you that that's
12 attributable to the RSD?

13 A. Yes.

14 Q. What doctor told you that?

15 A. Dr. Gelman, Dr. Daitch, Dr. Bellis,
16 Dr. Reynolds, Dr. Duwanjee.

17 Q. Wait, okay. I got "Ronji," who was after
18 "Ronji"?

19 A. Dr. Duwanjee.

20 Q. Duwanjee, okay. Anyone else?

21 MR. LEVIN: You want to read back the
22 recitation of doctors?

23 (The requested portion was read.)

24 A. Dr. Grabow.

1 Q. Okay, let's go back over that list, because I
2 want to know where each of these doctors, where
3 they're located, okay?

4 A. Okay.

5 Q. You seem to have it in your head, so let's
6 start with the first doctor. If you could just name
7 the doctor and name where they're at.

8 A. Dr. DiPretoro, Newark, Delaware.

9 Q. And I know Dr. Gelman. But who else? And I
10 know Dr. Duwanjee, the last one that you named. But
11 Gray --

12 A. Dr. Grabow is at Johns Hopkins.

13 Q. Okay, how long, how many times did you see
14 Dr. Grabow?

15 A. Just once.

16 Q. And who else?

17 A. Dr. Reynolds and Dr. Daitch are both in Fort
18 Myers, Florida. Dr. Bellis is in Cape Coral, Florida.

19 Q. And the other doctor in Fort Myers, Reynolds
20 and what was the other doctor, how do you spell that
21 name?

22 A. Which name?

23 Q. Reynolds and whoever else it was in --

24 A. Daitch, D-a-i-t-c-h.



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1 Q. What type of doctor is Dr. Grabow?

2 A. He is an anesthesiologist pain specialist.

3 Q. Okay, how about Reynolds?

4 A. Orthopedic surgeon.

5 Q. Daitch?

6 A. Pain management specialist.

7 Q. And Bellis?

8 A. Podiatrist.

9 Q. Now, when you went to Johns Hopkins, what did
10 they tell you there?

11 A. They told me that I eventually would get to the
12 point where I could walk without the brace, and then I
13 would have to wean myself off the crutches, but that I
14 needed to continue taking the medicines. He
15 prescribed a new medicine, and said that I would never
16 run again. I would get to the point where I could
17 walk unaided but never run.

18 Q. And how long did you wear the brace?

19 A. Which brace?

20 Q. The first one that you had I believe was called
21 a MAFO.

22 A. Um-hum.

23 Q. How long did you wear that?

24 A. Three to four months.

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1 MR. LEVIN: And to be clear, the MAFO
2 brace is the type of brace that we would see at the
3 beginning of "Forest Gump" or one of Jerry's Kids,
4 that type of brace? Is that right?

5 THE WITNESS: Yeah, it's a hard plastic
6 Forest Gump-like brace.

7 Q. All right. Now, during that time you were
8 non-weight bearing or weight bearing?

9 A. I was non-weight bearing at the beginning, and
10 then through physical therapy I started to be able to
11 weight bear a little bit.

12 Q. And then you said other braces. What other
13 braces did you use?

14 A. I had a big walking boot.

15 Q. When was that?

16 A. After the MAFO brace.

17 Q. Immediately after?

18 A. I had it prior to and then after, and then when
19 I fractured my foot I wore it also.

20 Q. And how long did you wear that?

21 A. At which time?

22 Q. Well, first, immediately after the MAFO.

23 A. I wore it for about three months.

24 Q. And then you said when you fractured your foot



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1 you wore it as well. That wasn't the same time as
2 this?

3 A. That's what I was answering there, because that
4 was after the MAFO.

5 Q. Okay. Then did you wear it again?

6 A. After I fractured my foot?

7 Q. No, I understand that that's what this is. You
8 said which time, so what other time did you wear it?

9 A. I wore it after the first cast was off, before
10 I got the MAFO.

11 Q. Okay, got it. So did you wear it any time
12 after the foot fracture and after you wore it for
13 that, the three months there, did you wear a brace
14 ever again after that?

15 A. No.

16 Q. And did you have physical therapy after that?

17 A. Yes.

18 Q. And when was that?

19 A. In January of '03.

20 Q. And why was that?

21 A. It's part of the treatment for RSD.

22 Q. Was there a break in between?

23 A. I was not in physical therapy while the
24 fracture was healing.

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1 Q. So that's what represents that break.

2 A. Yes.

3 Q. Have you been in physical therapy since January
4 then, or since the time of this incident, have you
5 been in physical therapy in some form or fashion?

6 A. Yeah. There's been, there's been some breaks.

7 Q. In physical therapy?

8 A. Yes.

9 Q. And when would those be?

10 A. Well, the past two months I haven't been in,
11 waiting for clearance for it to be paid for. When I
12 go back to Phoenix I have eight more weeks of physical
13 therapy.

14 Q. And is that through worker's comp?

15 A. Yes.

16 Q. In 1993 you had surgery for an accessory
17 navicular coalition. Who did that surgery?

18 A. Dr. DeThomas.

19 Q. And where was that at?

20 A. Lewistown, Pennsylvania.

21 Q. Was that at Lewistown Hospital?

22 A. Yes.

23 Q. And what were your symptoms before that, before
24 the surgery?



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